

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

* * * * *

CRAIG DAVIS, as parent and
natural guardian of
ANDREW DAVIS,
Plaintiff,

vs.

CATAMOUNT DEVELOPMENT CORP.,
CATAMOUNT DEVELOPMENT CORP.,
d/b/a CATAMOUNT SKI AREA,
Defendants.

CIVIL ACTION
No. 05-30011-MAP

* * * * *

DEFENDANT CATAMOUNT DEVELOPMENT CORP.'S
OPPOSITION TO PLAINTIFF'S MOTION TO CONTINUE DEPOSITION AND TO
COMPEL ANSWER TO DEPOSITION QUESTIONS
AND CROSS MOTION FOR A PROTECTIVE ORDER PURSUANT TO RULE 30(d)(4)

Now comes the defendant Catamount Development Corp.
("Catamount"), and opposes the plaintiff's motion on the grounds
that the motion seeks disclosure of irrelevant information that
is designed to violate privacy interests and that is designed to
harass, annoy, and oppress William Gilbert.

Defendant respectfully requests that this Court grant a
protective order pursuant to Rule 30(d)(4) of the Federal Rules
of Civil Procedure to preclude plaintiffs from compelling William
Gilbert to appear a second time for deposition for purposes of
answering irrelevant questions which are calculated to harass and
to invade Mr. Gilbert's privacy. As grounds for its opposition
and cross motion, the defendant states the following.

Introduction

In this action, the plaintiff seeks to recover damages
arising out of an accident that occurred when the plaintiff was
skiing at Catamount Ski Area, which is operated by Catamount
Development Corp. At the deposition of William Gilbert,
President of Catamount Development Corp., the plaintiff's counsel
sought to determine the witness' salary and number of shares of
Catamount Development Corp. held by Mr. Gilbert. Counsel for
defendant properly objected to that inquiry, and is now seeking a

protective order to enjoin plaintiff from harassing Mr. Gilbert and violating his privacy.

Argument

The Plaintiff is Not Entitled to Obtain Information Concerning the Salaries of the Defendant's Employees

Catamount respectfully submits that the plaintiff's motion should be denied, and that its cross motion for a protective order should be granted. It was appropriate for counsel to instruct Mr. Gilbert not to answer the questions regarding his salary. The instruction was necessary to protect Mr. Gilbert from harassment, annoyance, and oppression and to bring its cross motion for a protective order pursuant to Rule 30(d)(4).

The application of Rule 30(d)(4) is addressed to the trial judge's discretion. *Poliquin v. Garden Way, Inc.*, 989 F.2d 527 (1993); *Marrese v. American Academy of Orthopaedic Surgeons*, 692 F.2d 1083, 1088 (7th Cir. 1982).

Catamount's profits are immaterial because it is well established that the wealth of a defendant is not relevant to liability. *Downey v. Union Trust Co. of Springfield*, 312 Mass. 405 (1942). Mr. Gilbert's or any other officer's salary figure, or the number of shares held by the officers, has no relevance to the plaintiff's claim that he was injured while skiing at Catamount.

Plaintiff claims that he needs the salary information to show that Mr. Gilbert is biased in favor of Catamount. This contention is specious. At deposition, Mr. Gilbert stated that he works for Catamount, that he owns shares of Catamount, that he is an officer of the corporation, and that he receives a salary from Catamount. (See deposition of W. Gilbert, page 8, lines 2-3, deposition of W. Gilbert, page 48, line 18; deposition of W. Gilbert, page 51, line 20). Disclosure of Mr. Gilbert's salary figure and share in profits would not serve any additional purpose under plaintiff's theory of relevance. To the extent that plaintiff argues that the degree of bias is proportional to the degree of Mr. Gilbert's financial stake in the company, this argument is speculative at best. Further, this minuscule difference, if there is any, is de minimis. If the burden of answering certain questions at deposition outweighs the value of the answers, a protective order is appropriate. *Saylavee LLC v. Hockler*, F. Supp. 2d, 2005 WL 1398653 (D.Conn).

The cases cited by plaintiff in his motion to compel further testimony are inapposite. In *U.S. v. International Business Machines ("IBM") Corporation*, 66 F.R.D. 215 (1974), an anti-trust

case, the prospective deponents were not parties to the litigation, nor were they representatives of defendant IBM Corp. *Id.* at 217. The court emphasized the financial benefits that could inure to the prospective deponents if their testimony harmed defendant IBM Corp., and therefore allowed IBM Corp.'s motion to compel answers regarding the deponents' salaries and interest in the company. *Id.* at 217. Here, by contrast, plaintiff wishes to show that Mr. Gilbert, as a representative of a party to the litigation, may testify favorably to Catamount. As noted above, it is already undisputed that Mr. Gilbert works for Catamount, that he is paid by Catamount, and that he owns shares of Catamount. The reasoning in *IBM* is not applicable to a case involving a plaintiff who was injured at a ski resort operated by a primarily family owned corporation.

Plaintiffs also cite *Cameron v. Norfolk & Dedham Mutual Fire Insurance Co., Inc.*, which is similarly inapposite. *Cameron* does not involve a motion to compel deposition testimony. There, the defendant was sued when its employee, allegedly drunk, operated his vehicle and collided with a motorcycle. The court held that evidence that defendant had paid for its employee's criminal legal fees was discoverable. Plaintiff has not cited any case law which requires disclosure at deposition of specific salary information given the foregoing circumstances.

In short, requiring Mr. Gilbert to disclose his salary would subject him to harassment, oppression, and annoyance, and would reveal personal and private information that is completely irrelevant to the plaintiff's claim and that is irrelevant for purposes of showing bias.

Conclusion

For the foregoing reasons, defendant Catamount respectfully submits that its motion for a protective order should be granted.

Respectfully,
Defendant,
Catamount Development Corp.

By its attorneys,

/s/ William L. Keville, Jr.
William L. Keville, Jr.
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1 It is further agreed that the deponent will
2 not waive the reading and signing of the
3 deposition and the sealing of said deposition will
4 be waived.

5
6 It is further agreed by and between the
7 parties that notification to all parties of the
8 receipt of the original deposition transcript is
9 also hereby waived.

10
11 *****

12
13 **WILLIAM GILBERT**, the Deponent, having
14 been first identified by license and duly sworn,
15 deposes and says as follows:

16
17 **DIRECT EXAMINATION BY MR. FERRIS**

18 **Q.** (BY MR. FERRIS) Good morning,
19 Mr. Gilbert, my name is Charles Ferris, I
20 represent Andrew Davis in connection with a
21 lawsuit pending against Catamount Development
22 Corporation. I'm going to be asking you some
23 questions. If there's any question that you
24 don't understand, please ask me and I'll rephrase

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09:56:59AM 1 it. And if you need to take a break at any point
09:57:06AM 2 in time, let me know as well. Is that okay?

09:57:08AM 3 **A. Yes.**

09:57:09AM 4 **Q.** And it's just important to answer
09:57:11AM 5 questions with words rather than nods of the head
09:57:17AM 6 so that the court reporter can accurately record
09:57:20AM 7 your answers. It's also important to let me
09:57:22AM 8 finish my question before starting your answer so
09:57:27AM 9 that the record would read clearly. Do you
09:57:30AM 10 understand that?

09:57:31AM 11 **A. Yes.**

09:57:31AM 12 **Q.** Could you state your name and address
09:57:38AM 13 for the record, please?

09:57:39AM 14 **A. William Gilbert, 1136 Barker Road,**
09:57:40AM 15 **Pittsfield, Massachusetts.**

09:57:51AM 16 **Q.** Okay. I'm going to show you two
09:58:00AM 17 exhibits that have previously been marked as 51
09:58:03AM 18 and 52.

09:58:06AM 19 **A. I don't think I ever saw this.**

09:58:08AM 20 **Q.** Okay. I don't think there's a
09:58:14AM 21 question pending at the moment.

09:58:15AM 22 Have you ever seen Exhibit Number
09:58:18AM 23 51 before?

09:58:20AM 24 **A. Yeah. This is -- yes, I believe I**
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09:58:26AM 1 **saw that.**

09:58:28AM 2 **Q.** But you don't believe you've seen
09:59:11AM 3 Exhibit 52 before?

09:59:12AM 4 **A. That's correct.**

09:59:13AM 5 **Q.** Okay.

09:59:14AM 6 **MS. CARLEEN:** Bill, why don't
09:59:16AM 7 you -- if he could just take a look at this one
09:59:18AM 8 again.

09:59:19AM 9 **Q.** (BY MR. FERRIS) There's a subpoena
09:59:20AM 10 attached to that.

10:00:10AM 11 **A. I believe there's been responses, is**
10:00:13AM 12 **there not.**

10:00:15AM 13 **Q.** Well, have you ever seen -- now that
10:00:16AM 14 you've looked at Exhibit 52 and subpoena
10:00:21AM 15 language, did you in fact ever review the
10:00:23AM 16 subpoena before?

10:00:24AM 17 **A. I believe I did.**

10:00:26AM 18 **Q.** Okay. Mr. Gilbert, you're here today
10:00:30AM 19 to testify on behalf of Catamount Development
10:00:33AM 20 Corporation, is that correct?

10:00:40AM 21 **A. Yes.**

10:00:45AM 22 **Q.** And what is your position with
10:00:45AM 23 Catamount Development Corporation?

10:00:45AM 24 **MS. CARLEEN:** Object to the form.
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10:00:45AM 1 Go ahead.

10:00:45AM 2 **THE WITNESS:** President of the
10:00:47AM 3 corporation and general manager.

10:00:50AM 4 **Q.** (BY MR. FERRIS) Okay. And are you
10:00:53AM 5 here also in response to Exhibit 51, which asked
10:00:57AM 6 for Catamount to produce a person with knowledge
10:01:00AM 7 concerning certain items listed on Exhibit 51?

10:01:03AM 8 **MS. CARLEEN:** He's here to
10:01:05AM 9 testify with respect to all three categories
10:01:08AM 10 listed on the notice.

10:01:10AM 11 **MR. FERRIS:** Okay. I'd
10:01:13AM 12 appreciate it if you'd let him answer the
10:01:20AM 13 questions, but thank you.

10:01:24AM 14 **Q.** (BY MR. FERRIS) So you're here to
10:01:25AM 15 testify as a person designated with knowledge of
10:01:28AM 16 the information requested on Exhibit 51 and then
10:01:30AM 17 you're also here to testify as a custodian of
10:01:34AM 18 documents on behalf of Catamount. And then also
10:01:43AM 19 in your capacity as managing agent of Catamount,
10:01:48AM 20 is that correct?

10:01:49AM 21 **A. Yes.**

10:01:50AM 22 **MS. CARLEEN:** Objection.

10:01:50AM 23 **Q.** (BY MR. FERRIS) You can answer.

10:01:50AM 24 **MS. CARLEEN:** I think he did.
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10:46:02AM 1 correct?

10:46:02AM 2 **A. Correct.**

10:46:02AM 3 **Q.** Okay. Have you retained an expert to

10:46:02AM 4 view the accident site?

10:46:15AM 5 MS. CARLEEN: Objection.

10:46:19AM 6 THE WITNESS: That's me. No, I

10:46:23AM 7 have not.

10:46:30AM 8 **Q.** (BY MR. FERRIS) So at the current

10:46:32AM 9 time, neither Catamount nor its attorneys have

10:46:35AM 10 retained a ski industry expert to participate in

10:46:38AM 11 this litigation?

10:46:40AM 12 **A. That's correct.**

10:46:43AM 13 MS. CARLEEN: Objection.

10:47:11AM 14 **Q.** (BY MR. FERRIS) Now, what is your

10:47:19AM 15 experience in the ski industry, Mr. Gilbert?

10:47:22AM 16 MS. CARLEEN: Object to the form.

10:47:23AM 17 THE WITNESS: I took over a small

10:47:34AM 18 ski area in Carmel, New York called Fahnestock

10:47:39AM 19 Ski Area, F-A-H-N-E-S-T-O-C-K, in 1955. And then

10:47:47AM 20 went on to two more ski areas. Built one.

10:48:04AM 21 **Q.** (BY MR. FERRIS) Which one did you

10:48:05AM 22 build?

10:48:05AM 23 **A. Sterling Forest. And then in 1973**

10:48:14AM 24 **took over Catamount.**

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10:48:15AM 1 **Q.** And when you say in 1973 you took

10:48:22AM 2 over Catamount, did you purchase Catamount?

10:48:24AM 3 **A. That's correct.**

10:48:26AM 4 **Q.** Did Sterling Forest close?

10:48:27AM 5 **A. We sold Sterling Forest --**

10:48:30AM 6 **Q.** Okay.

10:48:35AM 7 **A. -- back in 1970. And we gave up**

10:48:40AM 8 **operating the other two about the same time.**

10:48:42AM 9 **Q.** The other two? I have Fahnestock.

10:48:45AM 10 What's the other one?

10:48:49AM 11 **A. Silvermine.**

10:48:52AM 12 **Q.** Where was Silvermine?

10:48:54AM 13 **A. Bear Mountain, New York.**

10:48:55AM 14 **Q.** Okay. And when you say we, do you

10:48:59AM 15 have some partners that have been involved in

10:49:04AM 16 these ventures with you?

10:49:05AM 17 **A. Don Edwards is my partner.**

10:49:12AM 18 **Q.** Is he a co-owner of Catamount?

10:49:16AM 19 **A. Yes.**

10:49:17AM 20 **Q.** And --

10:49:20AM 21 **A. Richard is his son.**

10:49:23AM 22 **Q.** Yes. I understand that. Is Richard

10:49:34AM 23 Edwards a co-owner as well?

10:49:36AM 24 **A. Yes.**

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10:49:26AM 1 **Q.** Okay. Any other owners?

10:49:29AM 2 MS. CARLEEN: Objection.

10:49:31AM 3 THE WITNESS: My son Tom.

10:49:32AM 4 **Q.** (BY MR. FERRIS) Okay. Have you had

10:49:41AM 5 any education relating to ski area operation?

10:49:50AM 6 MS. CARLEEN: Object to the form.

10:49:58AM 7 THE WITNESS: Yeah. We have

10:50:06AM 8 panels on a semiannual basis with the ski

10:50:10AM 9 industry.

10:50:11AM 10 **Q.** (BY MR. FERRIS) What kind of panels?

10:50:15AM 11 **A. All various, on all aspects of the**

10:50:20AM 12 **ski industry.**

10:50:29AM 13 **Q.** And so you attend these panels?

10:50:33AM 14 **A. Yes.**

10:50:35AM 15 **Q.** Okay. And who -- withdrawn.

10:50:36AM 16 Is there an organization that

10:50:37AM 17 runs these panel discussions?

10:50:38AM 18 **A. The National Ski Area Association, as**

10:50:43AM 19 **well as New England Ski Area Association.**

10:50:47AM 20 **Q.** When was the last one that you

10:50:49AM 21 attended?

10:50:49AM 22 **A. Two weeks ago.**

10:50:54AM 23 **Q.** And where was that?

10:50:57AM 24 **A. Killington.**

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10:50:59AM 1 **Q.** What was the subject of that

10:51:00AM 2 discussion?

10:51:01AM 3 MS. CARLEEN: Object to the form.

10:51:03AM 4 THE WITNESS: Terrain parks.

10:51:16AM 5 **Q.** (BY MR. FERRIS) For snowboarders?

10:51:21AM 6 MS. CARLEEN: Objection.

10:51:22AM 7 THE WITNESS: Terrain parks are

10:51:24AM 8 for skiers and snowboards.

10:51:27AM 9 **Q.** (BY MR. FERRIS) Okay. Any other

10:51:28AM 10 education -- withdrawn.

10:51:32AM 11 Have you had any other education,

10:51:32AM 12 other than these semiannual panels, with respect

10:51:35AM 13 to operating ski areas?

10:51:40AM 14 **A. I can't think of them. Most likely I**

10:51:52AM 15 **have.**

10:51:53AM 16 **Q.** Okay. Now, you said you own a

10:51:56AM 17 percentage of Catamount Development Corp.?

10:51:58AM 18 **A. Yes.**

10:51:59AM 19 **Q.** What percent do you own?

10:52:01AM 20 MS. CARLEEN: Objection. This is

10:52:02AM 21 not relevant.

10:52:03AM 22 MR. FERRIS: It relates to his

10:52:04AM 23 motivation and credibility.

10:52:04AM 24 MS. CARLEEN: Objection. I think

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10:57:07AM 1 it's completely irrelevant and I object to this
 10:57:06AM 2 line of questioning.
 10:57:10AM 3 Q. (BY MR. FERRIS) You can answer.
 10:57:11AM 4 A. I think she answered.
 10:57:17AM 5 Q. No. She -- I haven't heard your
 10:57:25AM 6 attorney direct you not to answer, and I would
 10:57:26AM 7 just cite Rule 30, which states that a person may
 10:57:37AM 8 instruct the deponent not to answer only when
 10:57:38AM 9 necessary to preserve a privilege, enforce a
 10:57:42AM 10 limitation directed by the Court, or to present a
 10:57:44AM 11 motion under Rule 30(d)(4). So I don't believe
 10:57:46AM 12 that she's telling you not to answer.
 10:57:52AM 13 MS. CARLEEN: Could you repeat
 10:57:54AM 14 the question or read back the question, please?
 10:57:56AM 15 Q. (BY MR. FERRIS) What percentage of
 10:57:57AM 16 Catamount Development Corporation do you own?
 10:58:03AM 17 MS. CARLEEN: Yeah. I'm going to
 10:58:04AM 18 instruct him not to answer that question.
 10:58:16AM 19 Q. (BY MR. FERRIS) What percentage of
 10:58:17AM 20 Catamount Development Corporation does your son
 10:58:18AM 21 own?
 10:58:23AM 22 MS. CARLEEN: Same instruction.
 10:58:26AM 23 Q. (BY MR. FERRIS) What is your salary
 10:58:28AM 24 at Catamount Development Corporation?
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10:58:30AM 1 MS. CARLEEN: Same instruction.
 10:58:32AM 2 It's completely irrelevant and it's being asked
 10:58:35AM 3 to harass.
 10:58:35AM 4 MR. FERRIS: It is most
 10:58:37AM 5 definitely not being asked to harass. I have no
 10:58:40AM 6 particular interest in this, other than trying to
 10:58:42AM 7 determine what the credibility of this witness
 10:58:45AM 8 is.
 10:58:46AM 9 MS. CARLEEN: But the type of
 10:58:48AM 10 answer you're trying to evoke would create more
 10:58:49AM 11 prejudice than anything probative here, so I am
 10:58:51AM 12 instructing him not to answer the question.
 10:58:54AM 13 That's my position, absent a court order.
 10:58:57AM 14 MR. FERRIS: Okay. I'll need
 10:59:01AM 15 that part of the transcript, also.
 10:59:02AM 16 Q. (BY MR. FERRIS) In addition to
 10:59:04AM 17 receiving a salary, do you share in the income of
 10:59:05AM 18 Catamount Development Corporation?
 10:59:06AM 19 MS. CARLEEN: Same instruction.
 10:59:08AM 20 THE WITNESS: No.
 10:59:12AM 21 Q. (BY MR. FERRIS) You don't share in
 10:59:14AM 22 the income of Catamount Development Corporation?
 10:59:16AM 23 THE WITNESS: I'm sorry?
 10:59:18AM 24 MS. CARLEEN: That's fine. If
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10:54:36AM 1 you're comfortable answering, that's fine.
 10:54:38AM 2 Q. (BY MR. FERRIS) Do you receive a
 10:54:39AM 3 salary?
 10:54:41AM 4 MS. CARLEEN: Same instruction.
 10:54:42AM 5 MR. FERRIS: So I'm not entitled
 10:54:45AM 6 to know whether your witness is paid as a paid
 10:54:47AM 7 employee of Catamount Development Corporation?
 10:54:48AM 8 MS. CARLEEN: What are you trying
 10:54:49AM 9 to get here, how much his salary is?
 10:54:52AM 10 MR. FERRIS: I'm asking
 10:54:53AM 11 questions --
 10:54:53AM 12 MS. CARLEEN: You're asking --
 10:54:54AM 13 phrase your question with regard to Catamount.
 10:54:55AM 14 Does he get paid by Catamount, is that what
 10:54:56AM 15 you're asking? I don't know what you're asking.
 10:54:57AM 16 Q. (BY MR. FERRIS) Well, do you receive
 10:54:58AM 17 a salary from Catamount Development Corporation?
 10:55:00AM 18 MS. CARLEEN: You can answer that
 10:55:00AM 19 yes or no.
 10:55:07AM 20 THE WITNESS: Yes.
 10:55:08AM 21 Q. (BY MR. FERRIS) Do you receive a
 10:55:09AM 22 salary from any other business entities?
 10:55:10AM 23 MS. CARLEEN: Objection.
 10:55:11AM 24 THE WITNESS: No.
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10:58:18AM 1 Q. (BY MR. FERRIS) Okay. Are there
 10:58:19AM 2 any other business entities or organizations
 10:58:21AM 3 involved in the operation of Catamount
 10:58:22AM 4 Development Corporation?
 10:58:24AM 5 A. No.
 10:58:26AM 6 Q. Okay. So you do receive a salary but
 10:58:27AM 7 you will not state what that salary is, is that
 10:58:29AM 8 correct?
 10:58:31AM 9 A. That's correct.
 10:58:32AM 10 MS. CARLEEN: Correct.
 10:58:34AM 11 MR. FERRIS: Okay.
 10:58:35AM 12 Q. (BY MR. FERRIS) Does your son also
 10:58:37AM 13 receive a salary?
 10:58:38AM 14 MS. CARLEEN: Same objection.
 10:58:40AM 15 Q. (BY MR. FERRIS) Does he receive a
 10:58:41AM 16 salary?
 10:58:43AM 17 A. Yes.
 10:58:44AM 18 Q. Okay. Now, in addition to fencing
 10:58:46AM 19 that's attached to wooden posts, does Catamount
 10:58:47AM 20 use any fencing that's attached to any break-away
 10:58:49AM 21 or flexible posts?
 10:58:50AM 22 MS. CARLEEN: Object to the form.
 10:58:51AM 23 THE WITNESS: Yes.
 10:58:52AM 24 Q. (BY MR. FERRIS) Okay. What are the
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